

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KATHERINE ALICE PENE BRE
a.k.a. CATHERINE ALICE PENE BRE
a.k.a. KATHERINE P. PENE BRE
a.k.a. KATHERINE PENE BRE KUNITZ
Monterey, California

Registered License No. 244958
Public Health Nurse Certificate No. 31972
Nurse Practitioner Certificate No. 5923
Nurse Practitioner Furnishing Certificate No.
5923.

Respondent.

Case No. 2007-207

OAH No. 2008040291

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby
adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on January 8, 2009.

IT IS SO ORDERED December 8, 2008.

La Francine W Tate

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Case No. 2007-207

OAH No. 2008040291

Registered License No. 244958
Public Health Nurse Certificate No. 31972
Nurse Practitioner Certificate No. 5923
Nurse Practitioner Furnishing Certificate No.
5923,

Respondent.

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on October 20, 2008.

Deputy Attorney General Maretta D. Ward represented complainant Ruth M. Terry, M.P.H., R.N., Executive Officer of the Board of Registered Nursing.

James E. Leininger, Attorney at Law, represented respondent Katherine Alice Penebre, who was present.

The matter was submitted on for decision on October 20, 2008.

SUMMARY AND ISSUE

The accusation was amended at hearing to allege three additional causes for discipline. Respondent stipulated to the truth of the charges and to each cause of the six causes for discipline alleged in the accusation as amended at hearing. Respondent presented evidence of her rehabilitation from drug and alcohol abuse and requests that she be allowed to continue to practice nursing while on probation to the board.

FACTUAL FINDINGS

License History

1. On August 31, 1974, the Board of Registered Nursing issued Registered Nurse License No. 244958 to respondent Katherine Alice Penebre, who was then known as Catherine Alice Penebre, and who has also been known as Katherine P. Penebre, and Katherine Penebre Kunitz. The license expired on December 1, 2005, but was renewed on August 14, 2006. The license is in full and effect and will expire on November 30, 2009, unless renewed.

2. On October 9, 1981, the board issued Public Health Nurse Certificate No. 31972 to respondent. The public health certificate expired on December 1, 2005, but was renewed on August 14, 2006. Respondent's public health nurse certificate will expire on November 30, 2009, unless renewed.

3. On January 31, 1992, the board issued Nurse Practitioner Certificate Number 5923 to respondent. The nurse practitioner certificate expired on December 1, 2005, but was renewed on August 14, 2006. Respondent's nurse practitioner certificate will expire on November 30, 2009, unless renewed.

4. On May 12, 1993, the board issued Nurse Practitioner Furnishing Certificate Number 5923 to respondent. The nurse practitioner furnishing certificate expired on December 1, 2005, but was renewed on August 14, 2006. Respondent's nurse practitioner furnishing certificate will expire on November 30, 2009, unless renewed.

First Cause for Discipline

5. Between June 1998 and September 2005, while licensed as a registered nurse, respondent diverted controlled substances and dangerous drugs, possessed controlled substances, prescribed controlled substances and dangerous drugs, and self-administered controlled substances and dangerous drugs. Respondent committed the following acts:

Diversion of Controlled Substances and Dangerous Drugs

a. Between June 1998 and January 2005 respondent obtained the controlled substances Halcion, Vicodin, diazepam, Sonata and Xanax and the dangerous drugs Soma and Toradol by fraud, deceit and misrepresentation in violation of Health and Safety Code section 11173, subdivision (a), in the following manner:

i. Between August 1998 and March 1999, respondent telephoned in prescription refills for herself for Halcion, Vicodin, and Soma, to Longs Drug Stores in Monterey and Carmel. She falsely identified herself to pharmacy staff as Rochelle A., an office assistant at the Big Sur Health Center in Santa Cruz, and falsely represented to pharmacy staff that the prescriptions had been ordered or authorized by William Bender,

M.D., of the Big Sur Health Center. In addition, between July 1998 and January 1999, respondent wrote false prescriptions for herself for Halcion, Vicodin, and Soma, under the names and Drug Enforcement Agency numbers of Dr. Bender and Deborah J.M. Biller, M.D., of the Big Sur Health Center, and she had the prescriptions filled at the Longs Drug Stores.

ii. Between July and November 1998 respondent telephoned in several prescription refills for diazepam and Halcion for her boyfriend, Dennis Demos, to the Longs Drugs Stores in Monterey and Carmel, and had them filled. Respondent falsely represented to pharmacy staff that the prescriptions had been ordered or authorized by Dr. Biller. In addition, between June and August 1998 respondent wrote false prescriptions for Demos under Dr. Biller's name and DEA number for diazepam and Halcion and she had the prescription filled at the Longs Drug Stores.

iii. On June 19, 2003, respondent telephoned in a prescription refill for Demos to a Walgreens pharmacy in Freedom, California, and had the prescription filled. Respondent falsely represented to pharmacy staff that the prescription had been ordered or authorized by Jeffrey A. Solinas, M.D., of Plazita Medical Center in Watsonville. In addition, between November 2002 and September 2003 respondent wrote false prescriptions for Demos for Sonata and diazepam under Dr. Solinas's name and DEA number and had the prescriptions filled at a Rite-Aid pharmacy and a Walgreens pharmacy in Freedom.

iv. Between July 1998 and March 1999 respondent telephoned in several prescription refills for Halcion and Vicodin for her brother-in-law John Cristiano to the same Longs Drug Stores and had the prescriptions filled. Respondent falsely represented to pharmacy staff that the prescriptions had been ordered or authorized by Dr. Biller and C. Ohlsen, M.D., of the Monterey Medical Group. In addition, between June and December 1998 respondent wrote false prescriptions for Vicodin and Halcion for John Cristiano under the names and DEA numbers of Dr. Biller and Dr. Ohlsen, and had the prescriptions filled at the Longs Drug Stores.

v. Between July 1998 and March 1999 respondent telephoned in several prescription refills for Soma, Halcion, and Vicodin for her sister Patricia Cristiano to the same Longs Drug Stores, and she had the prescriptions filled. Respondent falsely represented to pharmacy staff that the prescriptions had been ordered or authorized by Dr. Biller and Dr. Ohlsen. In addition, between June 1998 and February 1999 respondent wrote false prescriptions for Soma, Halcion, Xanax and Vicodin for Patricia Cristiano under the names and DEA numbers of Dr. Biller and Dr. Ohlsen, and had them filled at the Longs Drug Stores.

vi. On January 21, 2005, while employed and on duty as a registered nurse at the Plazita Medical Center, respondent took a syringe of the dangerous drug Toradol from the facility's drug supply without Dr. Solinas's knowledge or authorization, and placed the syringe in her lunch bag.

Possession of Controlled Substances:

b. Between June 1998 and September 2003 respondent possessed various quantities of the controlled substances Halcion, Vicodin, diazepam, Sonata, and Xanax without valid prescriptions from a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, as forth in Finding 5(a)(i) to (a)(v), *ante*, in violation of Business and Professions Code section 4060.

Prescription of Controlled Substances and Dangerous Drugs:

c. Between July 1998 and March 1999 respondent prescribed numerous quantities of the controlled substances Halcion and Vicodin and the dangerous drug Soma for herself, as set forth in Factual Finding 5(a)(i), *ante*. Between June 1998 and September 2003 respondent prescribed numerous quantities of controlled substances diazepam, Halcion, Sonata, Vicodin, and Xanax, and dangerous drug Soma for Dennis Demos, John Cristiano and Patricia Cristiano, as set forth in Factual Finding 5(a)(ii) to (a)(v), *ante*.

Self-Administration of Controlled Substances and Dangerous Drugs:

d. Between 1979 and September 2005 respondent self-administered the controlled substances marijuana, cocaine, methamphetamine, Vicodin, Halcion and the dangerous drug Soma without lawful authority.

Second Cause for Discipline

6. Between 1979 and September 2005, while licensed as a registered nurse, respondent used the controlled substances marijuana, cocaine, methamphetamine, Vicodin, Halcion, the dangerous drug Soma, and alcoholic beverages to an extent or in a manner dangerous to herself and/or others, in the following manner:

a. Respondent admits that from 1979 to April 1999 she used marijuana, cocaine and methamphetamine. She also consumed wine and gin in combination with Vicodin and Soma on a daily basis.

b. From the fall of 1993 to 1994, respondent worked as a registered nurse for the Doctors-On-Duty medical office in Monterey. She was terminated from this nursing position for excessive absenteeism. Respondent admits that her absences were due to her inability to work following her nightly use of wine, gin, Vicodin and marijuana, as well as her frequent use of cocaine.

c. In 1996, respondent worked part-time as a registered nurse for Dr. Solinas at Plazita Medical Center. She was terminated by Dr. Solinas in March 1999 due to frequent sick calls and failure to report to work. Respondent admits that her absences were due to her inability to report to work following her abuse of alcohol (wine and gin) in combination with Vicodin and marijuana, and her occasional use of cocaine.

d. Between May 1999 and August 2004 respondent was enrolled in the board's Drug Diversion Program. Respondent admits that she terminated from the program due, in part, to testing positive for alcohol. Following her termination from the diversion program, respondent had numerous relapses with alcohol and marijuana, and she intermittently used cocaine and methamphetamine.

e. On July 20, 2005, Santa Cruz County sheriff's deputies were dispatched to an unknown location in Santa Cruz based on a report that a woman was trying to step in front of oncoming traffic. Respondent told the deputies that she was going to kill herself by jumping in front of oncoming traffic. The officers placed respondent on a 72-hour hold per Welfare and Institutions Code section 5150 and transported her to Dominican Hospital. At the hospital, respondent tested positive for benzodiazepines and amphetamines. She was involuntarily transferred to the Behavioral Health Unit and then retransferred to the emergency department in order to be treated for drug withdrawal. From July 22 to July 24, 2005, respondent was treated in the Behavioral Health Unit for amphetamine-induced psychosis and polysubstance abuse.

Following her release from the hospital, respondent resumed abusing alcohol and Vicodin.

f. On September 5, 2005, emergency personnel were dispatched to Corralitos, California, to assist respondent who had fallen into a ditch near her home. Respondent reported to them that she had been hearing voices that did not exist, and that she had heard her daughter's voice but that it was actually a bush. Respondent was placed on another 72-hour hold and transported to Dominican Hospital. Respondent was diagnosed with a dislocated shoulder. She admitted to hospital personnel that she had ingested methamphetamine the previous day and night.

Third Cause for Discipline

7. Respondent admitted that between May 1999 and August 2004, while enrolled in the board's diversion program, she submitted for testing as her own urine, urine that she had obtained from someone else.

Fourth, Fifth and Sixth Causes for Discipline

8. In October 2005, without permission, respondent signed the name of a physician on a Treatment Authorization Form (TAR) for patient MC and transmitted the TAR to the Felton Pharmacy in Felton, California. The TAR authorized the pharmacy to provide Durgesic patches (fentanyl transdermal), a controlled substance, and Soma tablets, a dangerous drug, to patient MC. Respondent made the unauthorized TAR on behalf of herself and not MC as she represented.

Costs

9. Complainant certifies that the board has incurred \$18,117.75 in costs to investigate and prosecute this matter. This includes include charges from the Office of the Attorney General (\$9,903.50), the Division of Investigation (\$6,196), and the Legal Assistant Team (\$2,018.25).

A declaration was presented in evidence executed by the Senior Investigator Annette Rodriquez of the Division of Investigation, which specifies the time she spent on specified tasks of investigation, travel and report writing. In light of the length and complexity of the investigation, the Division of Investigation costs of \$6,196 appear reasonable.

No declaration was provided regarding the tasks performed by the Attorney General's office. As such, there is no factual basis on which to assess the reasonableness of these charges.

No declaration was provided regarding the tasks performed by the Legal Assistant Team. As such, there is no factual basis on which to assess the reasonableness of these charges.

Evidence re: Rehabilitation

10. Respondent has been a nurse for 34 years. She fully admits to being impaired for many of those years. She began to drink alcohol in mid-1970, but her abuse of it started later. She starting using marijuana in 1974, sometime later she started to use it daily and she became impaired by its use. Respondent started using cocaine in the mid 1980's and sometime later she became impaired by its use. She starting using methamphetamine in the late 1990's, and she became impaired by it. Respondent's use of Vicodin and Soma each started by an authorized prescription for her, but she continued to use them long after that and became impaired by them.

11. Respondent testified that she has been clean and sober since January 12, 2006, approximately 34 months. She testified that she decided she wanted to get her life back, and so she started attending Alcoholics Anonymous again. She started to speak up at AA meetings and to contact AA friends. She testified that she eliminated the people in her life that used drugs. She relocated to Monterey County. She surrounded herself with good friends who love her and with her daughter, who has been in recovery for two years. She started to regularly exercise (walk). She started to maintain a regular daily schedule. She added prayer into her life.

12. Respondent testified that she attends three AA meetings per week. Respondent did not present corroborating evidence of her attendance at AA meetings.

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SUPERIOR COURT

13. Respondent testified that she reconnected with a former sponsor in January 2007. Respondent testified that they speak weekly, and that they are working the steps together. No evidence from the sponsor was presented.

14. Respondent testified she has been diagnosed as bi-polar and depressed, and that she takes medications for these conditions. She testified that she has been under the treatment of three different psychiatrists since at least 1999. Her last psychiatrist, Dr. Fisher, retired in 2008. Her current treating psychiatrist is Michael Lebovitz, M.D., with whom she has met on two occasions (August and September 2008). Respondent testified that she will continue to meet with him monthly. Respondent did not present evidence from either of these psychiatrists regarding her psychological condition or her recovery.

15. Respondent testified that she sees a primary care physician, Dr. Salinas, who is an addiction specialist. Respondent did not present any evidence from Dr. Salinas regarding his treatment of her or the status of her recovery.

16. Respondent returned to nursing in 2006. Her first position involved direct patient care. She realized that she was not ready to handle the stress of patient care and left the position.

Respondent has worked in an administrative position as a Manager Clinical Liaison R.N. with TriWest Healthcare Alliance since March 19, 2007. Respondent has no direct patient care in this position. She likes the work because it does not cause her the stress that patient care does, and because its flexible hours allow her to attend AA meetings as needed. Respondent testified that her supervisor is aware of her substance abuse history, but she did not present any written evidence from her employer to substantiate such knowledge or to show her competence in the position.

17. Respondent has not participated in a formal rehabilitation program since 2006.

18. Respondent has not been subject to drug testing since 2006.

19. Respondent does not attend a nurse support group because the closest one to her is in Watsonville, some 25 miles from where she lives, and she does not have a reliable car.

20. Respondent has allowed Dennis Dimas to live with her for the last six months. (Dimas was one of the persons for whom she obtained drugs and was a source of her own addiction issues.) Respondent did this against the advice of her physicians, her sponsor and her friends from AA. Respondent decided to take a chance on Dimas because he has been in recovery for two years, and he has made amends to her. Respondent testified that she has learned that she does not want anyone to live with her and that Dimas will be moving out of her residence within a week of the hearing.

LEGAL CONCLUSIONS

First Cause for Discipline

1. Finding 5: Respondent is subject to disciplinary action pursuant to Business and Professions Code section 2761, subdivision (a), for unprofessional conduct as defined by Business and Professions Code section 2762, subdivision (a), in that while she was licensed as a registered nurse she diverted controlled substances and dangerous drugs, possessed controlled substances, prescribed controlled substances, and self-administered controlled substances and dangerous drugs.

Second Cause for Discipline

2. Finding 6: Respondent is subject to disciplinary action pursuant to Business and Professions Code section 2761, subdivision (a), for unprofessional conduct as defined by Business and Professions Code section 2762, subdivision (b), in that while licensed as a registered nurse she used controlled substances, dangerous drugs, and alcoholic beverages to an extent or in a manner dangerous or injury to herself or others.

Third Cause for Discipline

3. Finding 7: Respondent is subject to disciplinary action pursuant to Business and Professions Code section 2761, subdivision (a), for unprofessional conduct, in that she submitted a false urine sample for drug testing while in the board's diversion program.

Fourth Cause for Discipline

4. Finding 8: Respondent's conduct of falsifying the TAR for Durgesic patches and Soma tablets constituted a violation of Health and Safety Code section 11368, and provides cause for disciplinary action pursuant to Business and Professions Code section 2761, subdivision (a), for unprofessional conduct.

Fifth Cause for Discipline

5. Finding 8: Respondent's conduct of falsifying the TAR for Durgesic patches and Soma tablets constituted a violation of Health and Safety Code section 11170, and provides cause for disciplinary action pursuant to Business and Professions Code section 2761, subdivision (a), for unprofessional conduct.

Sixth Cause for Discipline

6. Finding 8: Respondent's conduct of falsifying the TAR for Durgesic patches and Soma tablets constituted a violation of Health and Safety Code section 11173, and provides cause for disciplinary action pursuant to Business and Professions Code section 2761, subdivision (a), for unprofessional conduct.

Costs

7. Business and Professions Code section 125.3 authorizes the complainant to request that a licensee found to have committed a violation of the Nursing Practice Act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case. Title 1, section 1042, of the California Code of Regulations, provides that proof of costs may be made by declarations that contain specific and sufficient facts to support findings regarding the actual costs incurred and the reasonableness of the costs. As set forth in Finding 9, the only charges that have been found to be reasonable are those of the Division of Investigation in the amount of \$6,196. Respondent shall be directed to reimburse the board for only these costs.

Other Matters

8. Respondent committed numerous and serious violations of the Nursing Practice Act demonstrating a lengthy and serious polysubstance addiction. Respondent violated the position of trust she held as a registered nurse when she forged or used without authorization the name and DEA number of various physicians for whom she worked at three different clinics. Respondent was in the board's diversion program from May 1999 to August 2004, during which time she continued to drink alcohol; and she submitted a false urine sample for testing. After being terminated from the diversion program, respondent resumed using drugs, in addition to alcohol, falsified the TAR, and was twice placed on a 72-hour hold for being a danger to herself. Because of the egregiousness of respondent's conduct, the recommended discipline under the board's disciplinary guidelines is license revocation.

On a record that establishes that respondent has been an extremely impaired nurse, respondent bears a very heavy burden of demonstrating her rehabilitation. The board has specific criteria to be utilized in determining rehabilitation from substance abuse. The criteria include, but are not limited to:

Successful completion of drug/alcohol treatment program (a minimum of six (6) months duration). The treatment program may be a combined in-patient/out-patient and aftercare. Such a program will include at least the following elements:

- Chemical-free treatment philosophy
- Individual and/or group counseling
- Random, documented biological fluid screening
- Participation in nurse (or other professional's) support group(s)
- Education about addictive disease
- Adherence to a 12-step recovery program philosophy, or equivalent

- Written documentation of participation in 12-step recovery groups, or equivalent.

For registered nurse licensees, employment in nursing for a minimum of six months with documentation (from the employer) that the employer was aware of the previous drug or alcohol abuse problems. Documentation must substantiate that while employed, there was no evidence of continued alcohol or drug use and that the respondent performed nursing functions in a safe and competent manner.


The evidence respondent has presented falls far short of satisfying these criteria. Respondent has not completed a six-month drug/alcohol treatment program with the required elements of counseling, random fluid testing, participation in a nurse support group, education about addictive disease, and written documentation of participation in a 12-step program. Respondent has not presented documentation from her current employer demonstrating six months of employment, knowledge of respondent's substance abuse, substantiating the lack of evidence of respondent's continued use of drugs or alcohol, and certifying competent nursing practice. The only evidence of rehabilitation presented by respondent is her own, uncorroborated testimony. While respondent is to be commended if she has been able to maintain her sobriety for almost three years, she has not presented the board with the type of documented evidence of recovery it requires of an impaired nurse. In the absence of competent evidence of rehabilitation, the protection of the public compels revocation of respondent's licenses.

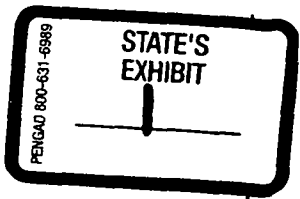
ORDER

1. Registered Nurse License No. 244958, Public Health Nurse Certificate No. 31972, Nurse Practitioner Certificate No. 5923, and Nurse Practitioner Furnishing Certificate No. 5923, issued to respondent Katherine Alice Penebre are revoked.

2. If and when respondent's licenses are reinstated, she shall pay to the board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.2 in the amount of \$6,196. Respondent shall be permitted to pay these costs in a payment plan approved by the board. Nothing in this order shall be construed to prohibit the board from reducing the amount of cost recovery upon reinstatement of the license or licenses.

DATED: 10-30-08


MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings



BILL LOCKYER, Attorney General
of the State of California
FRANK H. PACOE
Supervising Deputy Attorney General
MARETTA D. WARD, State Bar No. 176470
Deputy Attorney General
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-1384
Facsimile: (415) 703-5480

Attorneys for Complainant

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STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. *2007-207*

CATHERINE ALICE PENE BRE,
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a.k.a. KATHERINE PENE BRE KUNITZ
880 Cass Street, #209
Monterey, CA 93940

A C C U S A T I O N

Registered Nurse License No. 244958
Public Health Nurse Certificate No. 31972
Nurse Practitioner Certificate No. 5923
Nurse Practitioner Furnishing Certificate No. 5923

Respondent.

Complainant alleges:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

Registered Nurse License No. 244958

2. On or about August 31, 1974, the Board issued Registered Nurse License Number 244958 to Catherine Alice Penebre, also known as Katherine Alice Penebre, Katherine

1 P. Penebre, and Katherine Penebre Kunitz ("Respondent"). Respondent's registered nurse
2 license expired on December 1, 2005, but was renewed on August 14, 2006. Respondent's
3 registered nurse license will expire on November 30, 2007, unless renewed.

4 **Public Health Nurse Certificate No. 31972**

5 3. On or about October 9, 1981, the Board issued Public Health Nurse
6 Certificate Number 31972 to Respondent. Respondent's public health nurse certificate expired
7 on December 1, 2005, but was renewed on August 14, 2006. Respondent's public health nurse
8 certificate will expire on November 30, 2007, unless renewed.

9 **Nurse Practitioner Certificate No. 5923**

10 4. On or about January 31, 1992, the Board issued Nurse Practitioner
11 Certificate Number 5923 to Respondent. Respondent's nurse practitioner certificate expired on
12 December 1, 2005, but was renewed on August 14, 2006. Respondent's nurse practitioner
13 certificate will expire on November 30, 2007, unless renewed.

14 **Nurse Practitioner Furnishing Certificate No. 5923**

15 5. On or about May 12, 1993, the Board issued Nurse Practitioner Furnishing
16 Certificate Number 5923 to Respondent. Respondent's nurse practitioner furnishing certificate
17 expired on December 1, 2005, but was renewed on August 14, 2006. Respondent's nurse
18 practitioner furnishing certificate will expire on November 30, 2007, unless renewed.

19 **STATUTORY PROVISIONS**

20 6. Business and Professions Code ("Code") section 2750 provides, in
21 pertinent part, that the Board may discipline any licensee, including a licensee holding a
22 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
23 2750) of the Nursing Practice Act.

24 7. Code section 2764 provides, in pertinent part, that the expiration of a
25 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
26 against the licensee or to render a decision imposing discipline on the license. Under Code
27 section 2811, subdivision (b), the Board may renew an expired license at any time within eight
28 years after the expiration.

1 8. Code section 2761, subdivision (a), states that the Board may take
2 disciplinary action against a certified or licensed nurse or deny an application for a certificate or
3 license for unprofessional conduct.

4 9. Code section 2762 states, in pertinent part:

5 In addition to other acts constituting unprofessional conduct within
6 the meaning of this chapter [the Nursing Practice Act], it is unprofessional
conduct for a person licensed under this chapter to do any of the following:

7 (a) Obtain or possess in violation of law, or prescribe, or except
8 as directed by a licensed physician and surgeon, dentist, or podiatrist
administer to himself or herself, or furnish or administer to another, any
9 controlled substance as defined in Division 10 (commencing with Section
11000) of the Health and Safety Code or any dangerous drug or dangerous
10 device as defined in Section 4022.

11 (b) Use any controlled substance as defined in Division 10
(commencing with Section 11000) of the Health and Safety Code, or any
12 dangerous drug or dangerous device as defined in Section 4022, or alcoholic
beverages, to an extent or in a manner dangerous or injurious to himself or
13 herself, any other person, or the public or to the extent that such use impairs
his or her ability to conduct with safety to the public the practice authorized
14 by his or her license . . .

15 10. Code section 4022 states:

16 "Dangerous drug" or "dangerous device" means any drug or device unsafe
17 for self-use in humans or animals, and includes the following:

18 (a) Any drug that bears the legend: "Caution: federal law prohibits
dispensing without prescription," "Rx only," or words of similar import.

19 (b) Any device that bears the statement: "Caution: federal law restricts this
20 device to sale by or on the order of a -----," "Rx only," or words of similar
import, the blank to be filled in with the designation of the practitioner licensed to
21 use or order use of the device.

22 (c) Any other drug or device that by federal or state law can be lawfully
dispensed only on prescription or furnished pursuant to Section 4006.

23 11. Code section 4060 states:

24 No person shall possess any controlled substance, except that furnished to
25 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
26 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
27 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or
a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
28 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
This section shall not apply to the possession of any controlled substance by a

1 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
2 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
3 practitioner, or physician assistant, when in stock in containers correctly
labeled with the name and address of the supplier or producer.

4 Nothing in this section authorizes a certified nurse-midwife, a nurse
5 practitioner, a physician assistant, or a naturopathic doctor, to order his or
her own stock of dangerous drugs and devices.

6 12. Code section 4324, subdivision (a), states:

7 Every person who signs the name of another, or of a fictitious person, or
8 falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as
9 genuine, any prescription for any drugs is guilty of forgery and upon conviction
thereof shall be punished by imprisonment in the state prison, or by imprisonment
in the county jail for not more than one year.

10 13. Health and Safety Code section 11170 states that no person shall prescribe,
11 administer, or furnish a controlled substance for himself.

12 14. Health and Safety Code section 11173, subdivision (a), states, in pertinent
13 part:

14 No person shall obtain or attempt to obtain controlled substances, or
15 procure or attempt to procure the administration of or prescription for controlled
substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . .

16 Cost Recovery

17 15. Code section 125.3 provides, in pertinent part, that the Board may request
18 the administrative law judge to direct a licentiate found to have committed a violation or
19 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
20 and enforcement of the case.

21 CONTROLLED SUBSTANCES/DANGEROUS DRUGS AT ISSUE

22 16. "Marijuana" is a Schedule I controlled substance as designated by Health
23 and Safety Code section 11054, subdivision (d)(13).

24 17. "Cocaine" is a Schedule II controlled substance as designated by Health
25 and Safety Code section 11055, subdivision (b)(6).

26 18. "Vicodin", a compound consisting of 5 mg hydrocodone bitartrate, also
27 known as dihydrocodeinone, and 500 mg acetaminophen, is a Schedule III controlled substance
28 as designated by Health and Safety Code section 11056, subdivision (e)(4).

1 19. "Soma," a brand of Carisoprodol, is a dangerous drug within the meaning
2 of Business and Professions Code section 4022 in that it requires a prescription under federal
3 law.

4 20. "Methamphetamine" is a Schedule II controlled substance as designated by
5 Health and Safety Code section 11055, subdivision (d)(2).

6 21. "Halcion," a brand of triazolam, is a Schedule IV controlled substance as
7 designated by Health and Safety Code section 11057, subdivision (d)(30).

8 22. "Xanax," a brand of alprazolam, is a Schedule IV controlled substance as
9 designated by Health and Safety Code section 11057, subdivision (d)(1).

10 23. "Diazepam" is a Schedule IV controlled substance as designated by Health
11 and Safety Code section 11057, subdivision (d)(9).

12 24. "Toradol," a brand of ketorolac tromethamine, is a dangerous drug within
13 the meaning of Code section 4022 in that it requires a prescription under federal law.

14 25. "Sonata", a brand of zaleplon, is a Schedule IV controlled substance as
15 designated by Health and Safety Code section 11057, subdivision (d)(31).

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Diversion, Possession, Prescription, and Self-Administration**
18 **of Controlled Substances and Dangerous Drugs)**

19 26. Respondent is subject to disciplinary action pursuant to Code section
20 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
21 2762, subdivision (a), in that in and between June 1998, and September 2005, while licensed as a
22 registered nurse, Respondent did the following:

23 **Diversion of Controlled Substances and Dangerous Drugs:**

24 a. In and between June 1998, and January 2005, Respondent obtained the
25 controlled substances Halcion, Vicodin, diazepam, Sonata, and Xanax and dangerous drugs

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1 Soma and Toradol by fraud, deceit, misrepresentation, or subterfuge, in violation of Health and
2 Safety Code section 11173, subdivision (a), as follows:

3 1. In and between August 1998, and March 1999, Respondent
4 telephoned in numerous refill prescriptions for Halcion, Vicodin, and Soma for herself to
5 Longs Drug Stores located at 2170 North Fremont Street, Monterey, California, and No.
6 6, The Crossroads, Carmel, California, and had them filled. Respondent falsely
7 identified herself as Rochelle A., office assistant at the Big Sur Health Center, Santa
8 Cruz, California (hereinafter "Health Center"), and falsely represented to pharmacy staff
9 that the prescriptions had been ordered or authorized by Dr. Biller of the Health Center.
10 Further, in and between July 1998, and January 1999, Respondent wrote false
11 prescriptions for Halcion, Vicodin, and Soma for herself under the names and DEA (Drug
12 Enforcement Agency) numbers of Drs. Biller and Bender of the Health Center, and had
13 the prescriptions filled at both Longs Drugs Stores.

14 2. In and between July 1998, and November 1998, Respondent
15 telephoned in several refill prescriptions for diazepam and Halcion for her boyfriend,
16 Dennis Demos ("Demos"), to the Longs Drug Stores, referenced in subparagraph (1)
17 above, and had them filled. Respondent falsely represented to pharmacy staff that the
18 prescriptions had been ordered or authorized by Dr. Biller. Further, in and between June
19 1998, and August 1998, Respondent wrote false prescriptions for diazepam and Halcion
20 for Demos under the name and DEA number of Dr. Biller and had the prescriptions filled
21 at both Longs Drugs Stores.

22 3. On or about July 19, 2003, Respondent telephoned in a refill
23 prescription for diazepam for Demos to Walgreens Pharmacy located at 1810 Freedom
24 Boulevard, Freedom, California, and had it filled. Respondent falsely represented to
25 pharmacy staff that the prescription had been ordered or authorized by Dr. Jeffrey Solinas
26 of the Plazita Medical Center located in Watsonville, California. Further, in and between
27 November 2002, and September 2003, Respondent wrote false prescriptions for Sonata
28 and diazepam for Demos under the name and DEA number of Dr. Solinas and had the

1 prescriptions filled at Rite-Aid Pharmacy located at 1988 Freedom Boulevard, Freedom,
2 California, and Walgreens Pharmacy, referenced above.

3 4. In and between July 1998, and March 1999, Respondent
4 telephoned in several refill prescriptions for Vicodin and Halcion for her brother-in-law,
5 John Cristiano, to Longs Drug Stores, referenced in subparagraph (1) above, and had
6 them filled. Respondent falsely represented to pharmacy staff that the prescriptions had
7 been ordered or authorized by Dr. Biller of the Health Center and Dr. C. Ohlsen of the
8 Monterey Medical Group. Further, in and between June 1998, and December 1998,
9 Respondent wrote false prescriptions for Vicodin and Halcion for John Cristiano under
10 the names and DEA numbers of Drs. Biller and Ohlsen and had the prescriptions filled at
11 both Longs Drugs Stores.

12 5. In and between July 1998, and March 1999, Respondent called in
13 several refill prescriptions for Soma, Halcion, and Vicodin for her sister, Patricia
14 Cristiano, to Longs Drug Stores, referenced in subparagraph (1) above, and had them
15 filled. Respondent falsely represented to pharmacy staff that the prescriptions had been
16 ordered or authorized by Dr. Biller of the Health Center and Dr. C. Ohlsen of the
17 Monterey Medical Group. Further, in and between June 1998, and February 1999,
18 Respondent wrote false prescriptions for Soma, Halcion, Xanax, and Vicodin for Patricia
19 Cristiano under the names and DEA numbers of Drs. Biller and Ohlsen and had the
20 prescriptions filled at both Longs Drugs Stores.

21 6. On or about January 21, 2005, while employed and on duty as a
22 registered nurse at the Plazita Medical Center, Respondent took a syringe of Toradol from
23 the medical center's drug supply without Dr. Solinas' knowledge or authorization
24 (Respondent had placed the syringe into her lunch bag).

25 **Possession of Controlled Substances:**

26 b. In and between June 1998, and September 2003, Respondent possessed
27 various quantities of the controlled substances Halcion, Vicodin, diazepam, Sonata, and Xanax
28 without valid prescriptions from a physician, dentist, podiatrist, optometrist, veterinarian, or

1 naturopathic doctor, as set forth in subparagraphs 26(a)(1) through (5) above, in violation of
2 Code section 4060.

3 **Prescription of Controlled Substances and Dangerous Drugs:**

4 c. In and between July 1998, and March 1999, Respondent prescribed
5 numerous quantities of the controlled substances Halcion and Vicodin and dangerous drug Soma
6 for herself, as set forth in subparagraph 26(a)(1) above. Further, in and between June 1998, and
7 September 2003, Respondent prescribed numerous quantities of the controlled substances
8 diazepam, Halcion, Sonata, Vicodin, and Xanax and dangerous drug Soma for Dennis Demos,
9 John Cristiano, and Patricia Cristiano, as set forth in subparagraphs 26(a)(2) through (5) above.

10 **Self-Administration of Controlled Substances and Dangerous Drugs:**

11 d. In and between 1979, and September 2005, Respondent self-administered
12 the controlled substances marijuana, cocaine, methamphetamine, Vicodin, and Halcion and
13 dangerous drug Soma without lawful authority therefor.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Use of Controlled Substances, Dangerous Drugs, and Alcoholic Beverages to an**
16 **Extent or in a Manner Dangerous or Injurious to Oneself or Others)**

17 27. Respondent is subject to disciplinary action pursuant to Code section
18 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
19 2762, subdivision (b), in that in and between 1979 and September 2005, while licensed as a
20 registered nurse, Respondent used the controlled substances marijuana, cocaine,
21 methamphetamine, and Vicodin, the dangerous drug Soma, and alcoholic beverages to an extent
22 or in a manner dangerous or injurious to herself and/or others, as follows:

23 a. From approximately 1979 to April 1999, Respondent, by her own
24 admission, used marijuana, cocaine and methamphetamine. Respondent also consumed wine and
25 gin in combination with Vicodin and Soma on a daily basis.

26 b. From the Fall of 1993 to 1994, Respondent worked as a registered nurse at
27 the Doctors-On-Duty medical office located in Monterey, California. Respondent was
28 terminated for excessive absenteeism. Respondent admits that her absences were due to her

1 inability to report to work following her nightly use of wine and gin, in combination with
2 Vicodin and marijuana, and her frequent use of cocaine.

3 c. In approximately 1996, Respondent worked part-time as a registered nurse
4 for Dr. Solinas at the Plazita Medical Center located in Watsonville, California. In
5 approximately March 1999, Dr. Solinas terminated Respondent's employment due to her
6 frequent sick calls and failure to report to duty. Respondent admits that her absences were due to
7 her inability to report to work following her abuse of alcohol (win and gin), combined with
8 Vicodin and marijuana, and her occasional use of cocaine.

9 d. Between approximately May 1999, and August 2004, Respondent was
10 enrolled in the Board's Drug Diversion Program. Respondent, by her own admission, was
11 terminated from the program due, in part, to the fact that she had tested positive for alcohol.
12 Following her termination from the program, Respondent had numerous relapses with alcohol
13 and marijuana and intermittently used cocaine and methamphetamine.

14 e. On or about July 20, 2005, officers from the Santa Cruz County Sheriff's
15 Office were dispatched to an unknown location in Santa Cruz, California, based upon a report
16 that a woman was trying to step in front of traffic. Once the officers arrived at the scene,
17 Respondent told them that she was going to kill herself by jumping in front of traffic. The
18 officers found that there was probable cause to believe that Respondent was a danger to herself
19 and transported Respondent to the Dominican Hospital ("Dominican") Emergency Department
20 located in Santa Cruz, California, after placing her on a 72-hour hold pursuant to Welfare and
21 Institutions Code section 5150. Respondent submitted to a drug test and tested positive for
22 benzodiazepines and amphetamines. Respondent was involuntarily transferred to the Behavioral
23 Health Unit at Dominican and then back to the Emergency Department for treatment of drug
24 withdrawal. From July 22, 2005, to July 24, 2005, Respondent received treatment at the
25 Behavioral Health Unit, where she was diagnosed with, among other things, amphetamine-
26 induced psychosis and polysubstance abuse. Following her release from Dominican, Respondent
27 resumed abusing alcohol and Vicodin.

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1 f. On or about September 5, 2005, fire and ambulance personnel, along with
2 officers of the Santa Cruz County Sheriff's Office, were dispatched to Corralitos, California, to
3 assist Respondent, who had fallen into a ditch near her home. Respondent reported to emergency
4 personnel that she had been hearing voices that did not exist, heard a voice that she believed was
5 her daughter's, and then saw a figure which she believed was her daughter, but was actually a
6 bush. The officers found that there was probable cause to believe that Respondent was a danger
7 to herself and transported Respondent to the Dominican Emergency Department after placing her
8 on a 72-hour hold. Respondent was diagnosed at the Emergency Department with a dislocated
9 shoulder. Respondent told Emergency Department personnel that she had used
10 methamphetamine the previous day and evening.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct)**

13 28. Respondent is subject to disciplinary action pursuant to Code section
14 2761, subdivision (a), in that between approximately May 1999, and August 2004, while enrolled
15 in the Board's Drug Diversion Program, Respondent committed an act constituting
16 unprofessional conduct, as follows: Respondent, by her own admission, submitted a urine
17 sample that she had obtained from another person in place of her own for drug testing.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein
20 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

21 1. Revoking or suspending Registered Nurse License Number 244958, issued
22 to Catherine Alice Penebre, also known as Katherine Alice Penebre, Katherine P. Penebre, and
23 Katherine Penebre Kunitz;

24 2. Revoking or suspending Public Health Nurse Certificate Number 31972,
25 issued to Catherine Alice Penebre, also known as Katherine Alice Penebre, Katherine P. Penebre,
26 and Katherine Penebre Kunitz;

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1 3. Revoking or suspending Nurse Practitioner Certificate Number 5923,
2 issued to Catherine Alice Penebre, also known as Katherine Alice Penebre, Katherine P. Penebre,
3 and Katherine Penebre Kunitz;

4 4. Revoking or suspending Nurse Practitioner Furnishing Certificate Number
5 5923, issued to Catherine Alice Penebre, also known as Katherine Alice Penebre, Katherine P.
6 Penebre, and Katherine Penebre Kunitz;

7 5. Ordering Catherine Alice Penebre, also known as Katherine Alice
8 Penebre, Katherine P. Penebre, and Katherine Penebre Kunitz, to pay the Board of Registered
9 Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to
10 Business and Professions Code section 125.3;

11 6. Taking such other and further action as deemed necessary and proper.
12

13 DATED: 2/1/07.

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15 RUTH ANN TERRY, M.P.H., R.N.
16 Executive Officer
17 Board of Registered Nursing
18 Department of Consumer Affairs
19 State of California

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28 Complainant